

## Exhibit A

1 UNITED STATES BANKRUPTCY COURT  
2 EASTERN DISTRICT OF NEW YORK

3 -----X  
4 In Re: : 09-78585 (AST)  
5 GLOBAL CONTAINER LINES LIMITED, :  
6 Debtor. : Central Islip, New York  
7 -----X : December 22, 2009

8 TRANSCRIPT OF VARIOUS MOTIONS  
9 BEFORE THE HONORABLE ALAN S. TRUST  
10 UNITED STATES BANKRUPTCY JUDGE

11 APPEARANCES:

12 For the Debtor: MATTHEW G. ROSEMAN, ESQ.  
13 Cullen & Dykman, LLP  
14 100 Quentin Roosevelt Boulevard  
Garden City, New York 11530

15 For Sea Castle: J. STEPHEN SIMMS, ESQ.  
16 Simms, Showers, LLP  
20 S. Charles Street  
Baltimore, Maryland 21201

17 For TAL Int'l. Cont.: MICHAEL L. SCHEIN, ESQ.  
18 Vedder, Price, Kaufman & Kammholz  
19 1633 Broadway  
New York, New York 10019

20 For Key Bank and: PAUL A. LEVINE, ESQ.  
21 Key Equipment Lemery, Greisler LLC  
22 50 Beaver Street  
Albany, New York 12207

23 (Appearances continued on next page)  
24  
25

## APPEARANCES CONTINUED:

For Textainer Equipment: BRUCE WEINER, ESQ.  
Rosenberg, Musso & Weiner LLP  
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Brooklyn, New York 11242

For U.S. Trustee: Office of the United States Trustee  
BY: STAN YANG, ESQ.  
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1 THE CLERK: -- 3, 4, 5, 6, 7 and 8, Case Number 09-  
2 78585, Global Container Lines Ltd.

3 THE COURT: I'll take appearances, please. First in  
4 the courtroom.

5 MR. ROSEMAN: Good afternoon, Your Honor. Matthew  
6 Roseman, Cullen and Dykman, counsel to the debtor.

7 MR. SCHEIN: Good afternoon, Your Honor. Michael  
8 Schein, Vedder Price on behalf of TAL International Container  
9 Corp.

10 MR. LEVINE: Paul Levine, Your Honor, for Key Bank  
11 National Association.

12 MR. DEE: Nathan Dee, Cullen and Dykman for the  
13 debtor.

14 MR. WEINER: Bruce Weiner, Rosenberg, Musso & Weiner  
15 for Textainer Equipment Manager U.S. Limited.

16 MR. SIMMS: Steve Simms, Sea Castle and CAI.

17 MR. YANG: Stan Yang, U.S. Trustee, Your Honor.

18 THE COURT: Very well. Mr. Roseman.

19 MR. ROSEMAN: Good morning -- good afternoon, Your  
20 Honor. We have a number of matters on. I think probably the  
21 most expeditious way to handle this is to deal with the sale  
22 motion of Global Precision and then the Key Bank motion  
23 because they're interrelated and I think we have a general  
24 understanding with Key Bank, and then we can deal with the  
25 truly contested matters between -- regarding the rejection of

1 leases and the Sea Castle issue if that is amenable to the  
2 Court.

3 THE COURT: All right. That would be fine.

4 MR. ROSEMAN: Before the Court today is an emergency  
5 motion to consider the sale of the Global Precision. That's a  
6 vessel owned by Gilmore Shipping, a debtor in this case, and  
7 subject to the First Ship mortgage of Key Bank as well as the  
8 retention of Maguire Shipbrokers Ltd. to effectuate the sale.

9 The Global Precision is currently anchored off the  
10 Port of Sharjah in the United Arab Emirates. It's  
11 incapacitated and cannot move under its own power. However,  
12 as a matter of international maritime safety and law we have  
13 to keep this boat -- keep this vessel manned with a crew and  
14 this crew is -- encompasses approximately 20 sailors and we're  
15 spending roughly \$1,039.00 a day in crew wages and costs to  
16 keep these people in water, food and maintain power to the  
17 vessel.

18 Currently, the crew is owed approximately  
19 \$254,000.00 in wages and we expect to spend approximately  
20 \$10,000.00 through the estimated date of sale of 1/10/10 to  
21 effectuate the sale of this vessel. The broker, proposed  
22 broker, Maguire Ship Broker, has canvassed 758 parties. Of  
23 those 758 parties, nine parties have inspected the vessel. We  
24 have eight offers. These offers range which would range in a  
25 result in a net sales proceed after their commission between

1 \$1,463,000.00 to approximately \$1,250,000.00. In  
2 conversations with Key Bank's counsel, those estimates of the  
3 value of the vessel comport approximately with what they were  
4 anticipating. This vessel is going to be scrapped. The cost  
5 to repair the engine damage is between \$2 and \$3 million and  
6 it's not economically feasible. The scrap price is predicated  
7 upon the ship weight and a few other variables. So it's a  
8 pretty much a known quantity and we're dealing with known  
9 parties in the region.

10 Key Bank has raised certain concerns in their  
11 response to the motion. Probably the most important and most  
12 pressing to Key Bank, and Key Bank is here to address this, is  
13 the assurance that they'll have time to conduct whatever  
14 investigations they need to pursue claims under the hull and  
15 machinery policy and we believe and the debtor has been  
16 assisting both Key Bank and on its own right the documentation  
17 and prosecution of the claims on this policy. We believe that  
18 this is not a real issue because there have been multiple  
19 inspections of the vessel, documents -- volumes of documents  
20 have been turned over to the insurance broker and insurance  
21 parties. So we don't have a real concern there and I'm  
22 confident that by the anticipated sale date we can address all  
23 of those concerns.

24 I think as a matter of law the crew wages are  
25 entitled to a maritime lien and a priority over the ship

1 mortgage and as a matter of basic fairness I think it's  
2 imperative that we get the crew paid. These people are on the  
3 vessel. We need to pay them and repatriate them back to their  
4 countries of origin so that we can effectuate the final sale  
5 of the vessel. In our response to Key Bank's response we cite  
6 Desnick v. Sealift to support this proposition.

7           We believe this sale and this transaction is  
8 absolutely necessary and in the best interests of the estate.  
9 Primarily it reduces the claim of Key Bank and the ultimate  
10 claims to the non Gilmore debtors on the guarantees and  
11 secondly Sharjah is our home port. It's very important to our  
12 business reputation that we deal with problems efficiently and  
13 fairly. We want to make sure that the marketplace has no  
14 concerns that Global Container Lines, whether it be their Ship  
15 Global Precision or their ship's Global progress and  
16 prosperity are able to transport cargo efficiently and  
17 maintain their obligations to the industry in general.

18           THE COURT: What portions of the motion, if any,  
19 remain contested by Key Bank?

20           MR. ROSEMAN: Just possibly the exact timing of the  
21 sale.

22           THE COURT: All right. Then as far as the retention  
23 of the broker, is there any objection to Maguire Shipbrokers  
24 being retained at the 1.5 percent commission?

25           MR. LEVINE: No, Judge.

1 THE COURT: Mr. Yang.

2 MR. YANG: No objection, Your Honor.

3 THE COURT: Then let me hear from Mr. Levine on what  
4 remain to be the contested portions of the sale motion.

5 MR. LEVINE: Thank you, Judge. I think the debtor's  
6 reply that was filed last night overstated our position a  
7 little bit. It wasn't really an objection. It was a  
8 response. We understand very well the gravity of the  
9 situation and appreciate the debtor's cooperation in working  
10 with Key throughout this difficult process to try to realize  
11 upon our collateral which obviously will benefit the estate by  
12 substantially reducing our unsecured claim in the case.

13 I understand from counsel that the crew wages and --  
14 will be approximately \$250,000.00. Key Bank has had a very  
15 unfortunate experience in a similar situation with the Red  
16 Stone case and the Global Patriot in South Africa where --  
17 against a \$8.5 million debt. We'll be lucky to recover about  
18 half a million dollars due to a number of priming liens, crew  
19 wages, many other sorts of liens that the South African court  
20 has determined prime are lien.

21 It would be helpful if we could have something in  
22 the order that caps what the debtor can pay out without coming  
23 back to this Court first as far as sort of at least a fail  
24 safe or a safety amount such that if the priming liens are  
25 more than I would suggest \$300,000.00 I think that gives the



1 debtor a little bit of room. Then they have to come back to  
2 this Court for approval of any additional amounts before we  
3 argue about it here.

4 THE COURT: Are these a mixture of pre and post-  
5 petition wages?

6 MR. ROSEMAN: Yes, Your Honor.

7 THE COURT: So on the pre portion if we limited those  
8 to the 507(a)(4) and 507(a)(5) per employee or per worker, do  
9 you see any issue there?

10 MR. ROSEMAN: Yes, Your Honor, because we won't be  
11 able to transfer the title to the vessel because the crew  
12 won't leave the vessel.

13 THE COURT: I mean from a dollars and sense  
14 standpoint is there any crew member on the vessel that  
15 incurred more in unpaid pre-petition wages than the \$10,800.00  
16 and some limit for the property petition priority.

17 MR. ROSEMAN: We haven't done the analysis but it  
18 could very well be so.

19 THE COURT: I recognize the bank's concern is they  
20 don't want sort of a blanket pay whatever it is and have the  
21 debtor then held hostage if you will in a bad sense that  
22 there's an open ended amount that the debtor can pay and  
23 perhaps those claims become unnecessarily inflated. Would it  
24 make sense to go ahead and set a limitation within an adequate  
25 range of what the debtor currently estimates so that you have

1 an order that limits the wage amounts to -- whether  
2 \$300,000.00 is the right number or not.

3 MR. ROSEMAN: We have no problem with setting a  
4 limit. We think the limit -- I just conferred with my  
5 client -- should be approximately \$375,000.00 because we may  
6 have some port charges that we're going to have to clear up as  
7 well.

8 MR. LEVINE: These have a way of kind of increasing  
9 as we speak.

10 THE COURT: We used to call that the claims getting  
11 pregnant.

12 MR. LEVINE: Your Honor, I won't object to that but  
13 if that could be the number in the order and if we're going to  
14 exceed that we got to come back and talk to Your Honor.

15 MR. DEE: We have no problem with that, Your Honor.

16 THE COURT: There was an issue raised in the papers  
17 about getting access, getting onto this ship for inspection or  
18 other purposes. Has that now been resolved so that these  
19 other potential bidders can do such diligence as they need or  
20 is this really just a scrap value sale so they don't really --

21 MR. DEE: Its' a scrap value sale but part of the  
22 factoring in the scrap value is the equipment that's on the  
23 ship. Nine parties have inspected. The crew is getting a  
24 little aggressive. We think potentially with this bankruptcy  
25 court order which says there's going to be a sale and you're

1 going to get paid we may be able to address their concerns and  
2 we're certainly going to do our best efforts to insure as much  
3 access to the ship as possible. But, again, it's a little bit  
4 out of our control and we are in the United Arab Emirates. So  
5 the -- while the jurisdiction of this court is recognized I'm  
6 not sure how enforceably or the steps we can take to enforce  
7 it over there.

8 THE COURT: We've heard that before.

9 MALE VOICE: Your Honor, as I understand from  
10 counsel that the sale -- there would be a provision in the  
11 order that the sale would not close before January 10<sup>th</sup>.

12 THE COURT: I heard January 10, 2010. Was that for  
13 the auction to close or the sale to close?

14 MALE VOICE: Is there any way we can push that up a  
15 little bit more?

16 MR. DEE: Your Honor, I think the issue would be how  
17 do you pay the crew in the interim. When it comes to the  
18 Gilmore entity the vessel for the seven months prior to being  
19 brought into the port didn't generate any revenue. Because of  
20 the [inaudible] facility we can't really use money from the  
21 other debtors to pay the wages. So if we can push it for more  
22 two weeks -- I mean it's literally -- it's food, water and the  
23 fuel. It burns like a ton-and-a-half a fuel a day. You have  
24 to have electricity run the pipes and everything for safety  
25 and humanitarian reasons.

1           THE COURT: Well, but ultimately we're not  
2 determining lien perfection here today but I don't hear there  
3 really being a challenge to Key Bank's lien. We will get into  
4 lien validity issues perhaps later in the case but if it takes  
5 another week or so aren't you essentially eating into the  
6 proceeds available to Key Bank?

7           MR. DEE: I think it's more an issue of the crew  
8 hasn't been paid and trying to get this sale done as quickly  
9 as possible so they can get paid.

10          MR. ROSEMAN: Your Honor --

11          MR. DEE: We had to sell -- we had to agree to sell  
12 some of the bunkers to the local port authorities to get the  
13 agent to front some of the crew wages to prevent a mutiny the  
14 first time to let [inaudible] to do the inspection. I mean it  
15 really is -- it's a somewhat contentious situation and while  
16 we are all here and we understand that we're going to get a  
17 court order and be able to promise the crew they're going to  
18 get paid again, some of these people have been at sea for  
19 seven months.

20          THE COURT: Is it possible though to stagger the sale  
21 date from the possession date? In other words, if the auction  
22 is going to close on January 10<sup>th</sup> but if it turns out that your  
23 client needs a few more days -- if it turns out they need a  
24 few more days to further inspect the vessel, is that going to  
25 interfere with the sale process to stagger the auction date

1 from the possession date?

2 MR. DEE: Your Honor, this is something we would talk  
3 to Key Bank. If they'd be willing to advance the funds  
4 protected in the order so that we could pay and feed the crew  
5 then we could extend the date to give them more time.

6 MR. ROSEMAN: One of the problems we have is under  
7 our Bank of Pakistan financing order we're not permitted to  
8 spend any money from that facility on the Key Bank collateral.  
9 Now Gilmore has no money in the estate. The only liquidable  
10 assets Gilmore has are the bunkers which is the fuel on the  
11 ship that we've been selling to meet these current  
12 requirements. Our concern is we're going to run out of money  
13 for food and water and electricity we're going to have a  
14 terrible situation on our hands and be left with the  
15 unenviable position of violating the court order and our  
16 obligation to Bank of Pakistan to protect Key Bank.

17 MR. LEVINE: Your Honor, I will tell my client to  
18 live with the 10<sup>th</sup> and if --

19 THE COURT: Well, tell them they can have until the  
20 11<sup>th</sup> because that's a Monday. That's the business day unless  
21 you're going to be -- maybe you can close on a Sunday there. I  
22 don't know but it would seem in terms of bank funds clearing  
23 that you need to close on a business day anyway.

24 MR. ROSEMAN: I agree, Your Honor.

25 THE COURT: We'll set the sale date at January 11,

1 2010. We'll set a limit in the sale order of \$375,000.00 to  
2 be paid for past due wages, port charges, things that fall  
3 within the maritime lien laws. If either the debtor needs to  
4 come back to increase that limit on an expedited basis or, Mr.  
5 Levine, if the bank needs to come back and seek to extend that  
6 date then we can take that up on an expedited basis once you  
7 find -- if either of you find yourself in that situation.  
8 Presumably though to go beyond January 11<sup>th</sup> it would be  
9 probably seem appropriate to then shift the holding cost over  
10 to Key Bank but we may or may not get there.

11           Mr. Yang, any issue from your office on either of  
12 the sale itself, the retention of the broker or these  
13 conditions on the sale?

14           MR. YANG: No, Your Honor. I think this is probably  
15 the best judgment that this is using in terms of [inaudible]  
16 together this equipment because it's really just costing  
17 additional -- incurring I should say, incurring additional  
18 expenses to the estate. Essentially this case from what I was  
19 told is talking about some of the factors in my amount. The  
20 debtor has no prospect of any reorganization with respect to  
21 Gilmore. So by giving of this ship probably it would save the  
22 debtor a lot of unnecessary expenses on a going basis.

23           MR. LEVINE: Your Honor, if I could just have another  
24 point. With regard to the date, I do wish to acknowledge that  
25 the debtor has been cooperative in working -- Key Bank did

1 hire a UAE or an international firm with an UAE presence and a  
2 UAE national to assist and we have been on the ship at least  
3 once. So we have been working together on that point.

4 My final point that I would like -- well, final two  
5 points is I hear from counsel that the range of offers that  
6 we're getting are between \$1.2 and \$1.4 million. If we could  
7 just have a floor that the debtor would not accept a bid below  
8 \$1.2 million.

9 MR. ROSEMAN: I have no problem with that, Your  
10 Honor.

11 MR. LEVINE: I assume the debtor has every reason to  
12 accept the highest responsible bid.

13 MR. ROSEMAN: Absolutely.

14 THE COURT: In the response the debtor had no  
15 objection. If Key Bank wants to credit bid they can go over  
16 and participate in the 363(k) --

17 MR. ROSEMAN: I think we'd rather have the U.S.  
18 green backs, Your Honor.

19 THE COURT: What we'll do is we'll have the funds --  
20 the net proceeds will be held in a protected debtor-in-  
21 possession account. Certainly after the sale, Mr. Levine, if  
22 the bank -- if there's a disagreement about -- the validity or  
23 perfection today that there's a disagreement about whether or  
24 not those funds constitute the proceeds of the bank's  
25 collateral then we'll try to get a hearing down to determine

1 the disposition of those. It would seem that the interest the  
2 debtor will earn on those funds will be somewhat slim but if  
3 there's a disagreement after the dust settles about what's to  
4 happen with those funds then I'll take those up at a  
5 subsequent hearing.

6 MR. ROSEMAN: Assuming that there is no  
7 disagreement, Your Honor, would the parties just be able to  
8 submit a further order authorizing the net to be paid to Key  
9 Bank?

10 THE COURT: That should be noticed out and I'll treat  
11 it more in the nature of an agreed order lifting stay for  
12 those purposes. So that would be on what used to be fifteen  
13 days. Now I think it's -- I think fifteen became fourteen  
14 under the new rules. So that would be a fourteen plus three  
15 notice.

16 So now I'll look for an order, Mr. Roseman, that  
17 authorizes the sale -- authorizes, expressly authorizes the  
18 retention of Maguire Shipbrokers, sets the floor at the  
19 auction of no less than \$1.2 million U.S. Set the sale date  
20 of no earlier than January 11, 2010, sets a limit on the  
21 amount the debtor can expend for wages, port charges at  
22 \$375,000.00 and then provides that either the debtor or Key  
23 Bank can seek expedited relief from the Court in terms of the  
24 need for inspection or if necessary to increase the amount  
25 that can be paid on wages and port charges.



1 MR. ROSEMAN: Thank you, Your Honor.

2 MR. LEVINE: Thank you, Judge.

3 THE COURT: Very well. Thank you.

4 MR. ROSEMAN: If we can address Key Bank's motion.  
5 We've resolved that motion whereby, and we'll be submitting a  
6 stipulation today or tomorrow whereby the debtor will consent  
7 to the vacation of the stay so that Key Bank can pursue its  
8 rights and remedies under the insurance policies both with the  
9 Gilmore vessel and the Red Stone vessel. The portion of the  
10 motion concerning adequate protection for their liens on  
11 containers and Steve Adoring [Ph.] equipment has been settled  
12 in principle. We're going -- I believe we're going to have to  
13 make a 9019 motion for that because it involves basically a  
14 recasting of that debt so the debtor can retain possession of  
15 that equipment on a going forward basis.

16 THE COURT: Mr. Levine.

17 MR. LEVINE: That's accurate, Your Honor. We have  
18 exchanged a stipulated and agreed to order which actually I'd  
19 like to take another look at given the outcome of today's  
20 hearing on the sale motion before it gets submitted.

21 THE COURT: So then on the Key Bank motion for  
22 adequate protection or to lift stay what we'll look for is  
23 since there are parts of it or unopposed stay relief, the  
24 parts of it are compromises let's just treat the whole thing  
25 as a 9019 motion noticed as a Rule 9019 compromise. I take

1 those by presentment. So if you want to notice it by  
2 presentment then if there's an objection we'll set it down for  
3 hearing or by the end of today I may be assigning you another  
4 date for other hearings. So we may just be able to calendar  
5 it. Why don't we come back to that before we conclude today?

6 MR. LEVINE: Your Honor, I would just like to  
7 confirm though on the record that no party has an objection to  
8 Key proceeding with its insurance claim while that procedural  
9 process is underway. I don't think there's any dispute as  
10 to --

11 MR. ROSEMAN: The debtor has no objection.

12 THE COURT: Well, that portion of the motion was --  
13 that part of the motion was unopposed. There's no  
14 opposition -- there's nobody here today opposing the Key Bank  
15 motion.

16 Then I'll note for record purposes that to the  
17 extent that Key Bank continues prosecuting his claims against  
18 the funds held in South Africa the stay is lifted for those  
19 purposes. That is so ordered on the calendar today and then  
20 we'll look for the larger motion that resolves the other  
21 issues.

22 MR. ROSEMAN: Thank you, Judge.

23 THE COURT: Thank you.

24 MR. ROSEMAN: Your Honor, I think it make sense now  
25 to address the debtor's motion and the opposition to the

1 debtor's motion to reject certain leases and abandon the  
2 property pursuant to U.S.C. Sections 105, 365(a) and  
3 Bankruptcy Rule 6006.

4           It's in the debtor's business judgment that it's in  
5 the best interests of these estates to reject the container  
6 leases contained in Exhibit A of our motion as amended to  
7 include all of the Trighten [Ph.] leases. Textron and TAL  
8 have interposed certain objections but there's been no  
9 challenge to the rejection of the leases and no challenge to  
10 the debtor's business judgment.

11           The issue being raised is really threefold. One,  
12 that TAL and Textron are entitled to post-petition payments,  
13 and I believe this issue has been discussed and addressed by  
14 the Court in our December 1<sup>st</sup> hearing where the Court was  
15 inclined to agree with the debtor's position that there's no  
16 predicate for the relief they're seeking. What's really  
17 happening here is they're looking for a disguised super  
18 priority claim. They're saying you got a paper all of these  
19 expenses that are ancillary to the debtor's leases with the  
20 storage companies and the repair companies and that really  
21 relates to their claim and we'll get to a point where claims  
22 will be -- claims bar date will be set. They'll file their  
23 claims, what they think is appropriate, and if we think  
24 there's an issue we'll object to those claims and we'll have  
25 claims litigation but I don't think it needs to take place

1 today and I don't think it has any bearing on the rejection of  
2 these contracts. These are clearly a debtor's business  
3 judgment. 365(a) contemplates the debtor rejecting contracts  
4 that are owners. Nobody said hey, these contracts aren't  
5 owners. What they're saying is for you to reject them you  
6 should have to make these payments and we disagree.

7           The only case cited in support of that position is  
8 an Eastern District Pennsylvania case, In re: Hur, which  
9 really is distinguishable and not on point. In that case a  
10 bankruptcy trustee rejected a lease and physically retained  
11 possession of the property for six or nine months and at that  
12 point the leaseholders came in and said hey, you deprived us  
13 of the benefit of our bargain and you should have to pay our  
14 post-petition rental claims. Here, the debtor isn't doing  
15 anything. If third parties are controlling the equipment and  
16 property well, that's something that was implicit in their  
17 bargain. These container leases all contain provisions for  
18 circumstances where the containers or lost or stolen or  
19 rendered out of people's control. There's a liquidated damage  
20 clause per container in all of these leases. I think it's  
21 really a red herring and, in fact, a disguised priority claim.  
22 And going backwards again the time for that fight is not today  
23 in a rejection motion but in a response to an objection to  
24 their claims when they're filed.

25           Within our motion --

1           THE COURT: There was some discussion about whether  
2 the debtor has -- debtors have identified where they believe  
3 the containers to be.

4           MR. ROSEMAN: Your Honor, on three separate occasions  
5 we've emailed the locations of the containers were the latest  
6 time this morning, updated container locations. The fact of  
7 the matter is from the date of the filing of this case to the  
8 beginning of the case very few containers have been moved.  
9 Now, we're talking about a handful that were on a single ship,  
10 fourteen or fifteen. We've continually updated these  
11 containers and we continue to assist to the extent we can the  
12 release of these containers upon the grantor -- granting of  
13 this motion.

14           Once these leases are rejected then we have no  
15 desire to continue to retain possession of this property and  
16 within our motion we also requested a thirty day bar date and  
17 we're willing to work with the leasing companies for a  
18 mutually convenient bar date or we're -- or, in fact, we're  
19 going to submit a separate bar date order for all cases so  
20 we'll withdraw that portion of our motion.

21           THE COURT: I was going to ask. I don't think we  
22 have yet received a bar date order application. I take those  
23 ex parte.

24           MR. ROSEMAN: We will be submitting it shortly.

25           THE COURT: All right. Then I'm not sure who wants

1 to be up first. Mr. Schein.

2 MR. SCHEIN: Thank you, Your Honor. Michael Schein,  
3 Vedder Price on behalf of TAL.

4 As to the container list, we never received -- I  
5 personally never received an email which is what the debtor  
6 states in his record on December 15<sup>th</sup>. I even had my entire IT  
7 search through every email with Cullen and Dykman's suffix on  
8 and nothing was ever -- so we don't believe any report was  
9 ever provided other than what was provided just prior at the  
10 bankruptcy and not in conjunction with the request that was  
11 made at the last hearing. In fact, we only finally received an  
12 email three hours prior to this hearing. I'm not sure why if  
13 the debtors believe they did send it out on the 15<sup>th</sup>, they got  
14 our objection on that Friday. Once we made that known they  
15 could have just sent it out again or made note of it. I don't  
16 know why they waited to file a response and say we did it.  
17 They should have just sent it but they only waited until three  
18 hours before. So I can't comment on the scope, accuracy,  
19 veracity, whether it addresses all the things we requested  
20 previously at the last hearing and put in our papers. So I  
21 reserve judgment on whether that list is complete, updated,  
22 addresses the issues for purposes of my client and it makes  
23 relevance, Your Honor, when I get to my objection about the  
24 issue we have here.

25 Obviously I'll -- on the bar date side since they've

1 withdrawn I won't bother making any commentary as I understand  
2 it. We'll just have one standard bar date in the case.

3           Your Honor, they cite to a transcript of Your  
4 Honor's commentary. First of all, the way I read it because I  
5 only have this page of the transcript, the transcript  
6 doesn't -- the Court's statement didn't address the issue that  
7 I raised, Your Honor, at the last hearing. In the beginning  
8 of the transcript it talks about the issues of property and  
9 stay relief and the use of property and whether that was  
10 entitled to further claim.

11           This is a very specific narrow issue. I don't  
12 believe the Court made any judgment on it at the last hearing  
13 and reserved its rights to address it at the -- once the  
14 debtor put forth their rejection papers. We know what  
15 rejection damages is and my client is quite capable of filing  
16 a proof of claim for its rejection damages and we'll deal with  
17 that another day. But this is ransom damages. This is a  
18 circumstance which doesn't happen in the U.S. because of a  
19 federal court order. It's when a debtor rejects a lease for  
20 personal property. There's never an issue generally for the  
21 third party to get its property back. Landlords, anyone, they  
22 don't look to be in contempt of a federal bankruptcy court's  
23 order but we're not talking about being in the United States.  
24 We're talking about being in foreign jurisdictions and we're  
25 talking about circumstances where we have an absolute right

1 under our agreement. Rejection didn't terminate that  
2 agreement. It gives us a right to exercise those remedies to  
3 take back our property. We can't take back our property. We  
4 gave the Court a clear example based on the email where we're  
5 being -- our property is currently being held ransom by the  
6 depot saying the debtor owes me money. Unless the debtor pays  
7 me my money for warehousing that I'm not releasing your  
8 containers and I don't really care about any court order. I'm  
9 out here in a foreign jurisdiction and I'm not going to give  
10 you your property unless you, third-party, my client, TAL,  
11 pays the claims that the debtor owes.

12 Why should -- sorry.

13 THE COURT: But the rejection allowing the debtor to  
14 reject the lease -- I've not yet heard that there's a dispute  
15 on the debtor's business judgment.

16 MR. SCHEIN: We have none. We said in our papers we  
17 have no issue with the rejection. We want to get back our  
18 containers.

19 THE COURT: So the rejection is just authorizing the  
20 debtor to lawfully breach the pre-petition contract.

21 MR. SCHEIN: Correct.

22 THE COURT: So then at that point there's an arm  
23 wrestle between who has to bear the expense of returning the  
24 leased equipment if the debtor either chooses not to do it or  
25 can't do it, doesn't have the funds to do it and the lessor



1 opts to go get its equipment, doesn't that just create a claim  
2 against the estate?

3 MR. SCHEIN: No, because it's more than return. We  
4 aren't asking the debtor to pay for us to get the containers  
5 and move them or do whatever or keep them at that port if we  
6 decide and we pay going forward. That's return. That's  
7 taking our property back. We will file a rejection claim for  
8 that. We're talking about being able just to get our property.  
9 As the emails make clear, that port isn't allowing us to do  
10 anything with the property. We can't access the property  
11 unless we pay claims that have nothing to do with us. It's  
12 still property interest of the debtor. During the time that  
13 this port is asking for payment the debtor had the right to  
14 use it under the lease. So it was their property interest  
15 even though we owned the underlying property.

16 It's just getting access to take the property and  
17 move it wherever where we want to move it. What we didn't  
18 include in this email chain, Your Honor, which I have a  
19 subsequent letter, is according to the email which the debtor  
20 misreads the party -- the debtor's reps told the port party  
21 that we want to take all the containers and it says it in  
22 there. We want to take all the containers including my  
23 client's containers and move them somewhere else. We didn't  
24 understand why. So what we told the port is my client already  
25 has some containers there and we want to leave -- and this is

1 just one example. We want you to leave our containers there  
2 and we'll pay for going forward for storage because it's now  
3 getting our property. It's not the debtor's obligation.

4           The third party said okay, send us a letter right  
5 away indicating that you would be willing to pay charges going  
6 forward because the debtor has told us they will pay all  
7 charges because they want to move all the containers,  
8 including ours, and they couldn't stop the debtor from doing  
9 that once they paid and it didn't make sense for us that those  
10 containers get moved to some place else just to come back to  
11 where they would be in the first place.

12           Unfortunately we've heard nothing in that response.  
13 In fact, we heard nothing from the debtor's agents which is a  
14 further concern we had is there's been zero cooperation by the  
15 debtor's foreign agents, either responding, returning calls,  
16 communication. We're being told they've just hunkered down  
17 and no response. So our issue is two-fold. It's first, we  
18 can't get a hold of our property to do whatever we want with  
19 it because we're being held for ransom just like the email  
20 says. You pay us the debtor's claims, we'll let it go.  
21 That's different than paying the cost of moving our property  
22 out of a landlord space. In that situation that's rejection  
23 damages to take the property, go bring a mover and take it out  
24 of the space but the landlord is not stopping you from taking  
25 it out of the space. He's not holding back because he sees

1 there's a federal court order that says release the property  
2 and let him take it.

3 THE COURT: But then what in your scenario is the  
4 alternative? If what you're arguing is I can't let the debtor  
5 reject the lease unless it pays what's required to -- for your  
6 client to retrieve the property then is the remedy simply to  
7 require the debtor to continue performing a lease it doesn't  
8 need any more?

9 MR. SCHEIN: No, no. It's must simpler than that.  
10 The debtor can reject the lease. The Court can authorize the  
11 rejection and the debtor should be authorized and directed to  
12 pay its claims to that port to allow us -- as it relates to at  
13 least our property to allow us to come in and take our  
14 property.

15 THE COURT: Or simply let your client decide if it's  
16 worth paying whatever those charges are and then filing a  
17 claim for them.

18 MR. SCHEIN: But then we put the risk of --

19 THE COURT: Your analysis burdens the estate with a  
20 cost they decided it can't bear. If it wanted to pay the  
21 charges associated with maintaining the equipment or  
22 maintaining the containers it would seek to assume the lease  
23 obligations and then sell the equipment.

24 MR. SCHEIN: But the code never contemplated ransom  
25 charges being held out there. The debtors don't cite to a

1 single case where a court says it's the third party's  
2 responsibility to pay the ransom. Why? Because we're in a  
3 foreign jurisdiction where unfortunately as we said before  
4 this Court's order unfortunately doesn't have a lot of weight.

5 THE COURT: Well, all my order does is allow the  
6 debtor to lawfully breach the agreement.

7 MR. SCHEIN: But you could add to this order, give  
8 the debtor the authority and direct the debtor to pay that  
9 portion of the claims that hold back. It's not having -- it's  
10 paying whatever it takes to release those claims as against  
11 our property so that we can take back what we're rightfully  
12 entitled to as a result of rejection. It's not the same --  
13 we're not asking them to pay the shipping charges to move the  
14 containers. There are claims for storing that property that  
15 relate to our containers that are our property. The debtor  
16 didn't pay those and as the email makes quite clear the depot  
17 manager is not going to let us unless we pay.

18 There's nothing in the code in 365(g) and no case  
19 law we found directs that a third party should be forced to  
20 pay good ransom charges and then take the risk later on that  
21 maybe this Court finds it to be an administrative claim or  
22 not. The Court has the ability under its powers to authorize  
23 the debtor to pay these pre-petition claims and probably a  
24 portion of its post-petition so that we -- all we want to do  
25 is take our property.

1           THE COURT: How is this any different that if these  
2 containers were in Kansas?

3           MR. SCHEIN: Because there the landlord is not -- is  
4 going to listen to the order. Otherwise they'll be in  
5 contempt and there's ability to enforce that order because  
6 we're within the United States. This is a unique circumstance  
7 where we're in a foreign jurisdiction that doesn't provide for  
8 a lot of recognition of U.S. orders. The bottom line, the  
9 deport party only cares about cash as it was made clear in  
10 that email chain. And the debtor did state originally that  
11 they were going to pay it. Their statement in the email says  
12 the debtor is going to pay everything and then we just  
13 heard -- it went radio silent and we've had no cooperation or  
14 any response from the debtor's representatives.

15           THE COURT: And if the debtor doesn't have any  
16 unencumbered funds to pay these charges with then what, then I  
17 hold the debtor in contempt?

18           MR. SCHEIN: Well, first of all, the debtor hasn't  
19 made a statement it doesn't have any monies under the DIP or  
20 otherwise to use the funds to do so. It has authority under  
21 DIP or ordinary course. The debtors made representations that  
22 all these monies were coming in from UN contracts and -- we're  
23 not talking about right now hundreds of thousands of dollars  
24 here but we should have the ability whether it's a pot of  
25 money put aside to be able to be used by the container lessors

1 but it's unfair that we're basically going to be paying good  
2 money after bad and taking the risk that this Court may or may  
3 not find it to be a benefit to move. It's not what 365  
4 contemplated and yes, there is no case out there because there  
5 aren't that many foreign maritime cases that have faced this  
6 issue but the example is there. Last time I said it was a  
7 hypothetical -- we believed it would happen and here is the  
8 proof and this is just one port.

9 THE COURT: Has anyone yet contacted -- I guess  
10 you're saying this has already happened. You've contacted the  
11 location, the locations where the containers are. They've  
12 said we're owed storage charges. If the storage charges aren't  
13 paid we're not releasing your containers.

14 MR. SCHEIN: And we couldn't contact any of the  
15 others because while the debtors gave us a list a while back  
16 we asked the debtor from the last hearing we needed contact  
17 parties. A port is a large place. There are a lot of people.  
18 You need to know who the right person and that's why all this  
19 time has gone by where we could have made those  
20 communications, could have reached out and found out what  
21 economics we were talking about but I can't give the Court  
22 that information because we didn't get the list until three  
23 hours ago.

24 THE COURT: Once the leases or the contracts are  
25 rejected, are these containers property of the estate?

1           MR. SCHEIN: No, because it's their -- they relieved  
2 all obligation and right. It's ours. We'll take them or do  
3 whatever we want. They have no more -- in fact, we offered in  
4 a separate letter that I could give the Court. We offered to  
5 pay from the moment -- the debtors pay going forward we would  
6 take on all obligation for storage.

7           THE COURT: It's that point which, Mr. Schein, I'm  
8 not sure whether it matters that these containers are in  
9 Darfur or Kansas. Once they're no longer property of the  
10 estate -- all my order has allowed is the debtor to breach the  
11 equipment, to breach the lease. The equipment is no longer  
12 property of the estate. There's a stay violation. If the  
13 landlord in Kansas says you can't have the equipment back  
14 until you pay the warehouse charge. So I'm not following why  
15 this matters whether it's in Kansas or Darfur.

16           MR. SCHEIN: Well, right now it's still property  
17 stayed. It's still stayed. We can't take any action on that  
18 property right now. It's all been -- it's still under the  
19 stay. We couldn't have taken any action to go forward. We  
20 weren't about to pay the debtor's claims. That's not my  
21 client's responsibility but when this Court enters an order  
22 authorizing the refection of that lease as part of that order  
23 this Court can say in connection with rejecting the lease and  
24 removing the stay we also direct the debtor to pay what's  
25 appropriate to give access. We're asking for access to our

1 property so we can take it away, and that is completely within  
2 the Court's jurisdiction and there's nothing in the code and  
3 there's no cases out there like I said that says this is not  
4 transport or moving charges. This is access charges or what  
5 we've called ransom charges because we are being held for  
6 ransom. We are being held hostage by a third party and the  
7 only reason is because the debtor didn't pay them. It raises  
8 to -- it is an equitable situation. It seems inequitable and  
9 not contemplated anywhere by the code that we should have to  
10 pay more with the likelihood of never collecting against the  
11 debtor's estate.

12           Now is the time where we need this to be addressed  
13 because afterwards fine, we file a claim. What if this case  
14 is administratively insolvent or otherwise. Then we're out of  
15 luck and in the meantime we paid for the debtor's claims.  
16 We're not paying our claims. We're paying the debtor's  
17 claims.

18           THE COURT: All right. Mr. Simms, Mr. --

19           MR. SCHEIN: One further thing, Your Honor, and a  
20 point. What we also ask for besides whatever the Court rules  
21 on this is we ask the Court to direct the debtor to -- and its  
22 foreign representatives to cooperate and provide reasonable  
23 cooperation with -- I assume all the container lessors would  
24 be on this, in getting our containers released from third  
25 parties. We would need some language in the order to put



1 those third parties on notice to the extent there are places  
2 where there are no claims maybe for storage and we just want  
3 it in the order appropriate language that their foreign  
4 representatives are going to cooperate with us to get access  
5 to take back. We're not asking to incur costs but like I said,  
6 their representatives have shut down. They have not responded  
7 to our foreign reps. We've had no communication. We need the  
8 debtor's cooperation in removing our property once rejection  
9 is effective and we ask for language, notice something we put  
10 in the order so we can advise also these third parties to let  
11 them know that the stay has been lifted, that they can  
12 cooperate with us for those that are concerned about the  
13 order. So we'd want those basic protections to be put in an  
14 order so that we can get cooperation.

15 THE COURT: I would take it that the debtor would  
16 have no opposition to the stay -- to the extent that the stay  
17 is in effect following rejection that it's lifted to allow any  
18 of the container lessors to exercise their remedies.

19 MR. ROSEMAN: We have no objection to that, Your  
20 Honor. I have to say that we really tried to bend over  
21 backwards with all of our creditors and whenever we do  
22 something for the container companies it's always not enough.  
23 In fact, when we provided addresses for container companies we  
24 had to rush to our various ports looking for a turnover of  
25 those containers prior to any motions being made.

1           Judge, and I'll respond to his arguments at the  
2 appropriate time, but I resent the fact that there's been  
3 intimations that we haven't been cooperative because we have.  
4 The email chains that's referenced in this motion with -- not  
5 with the debtor, not with current agents of the debtor.  
6 They're hearsay upon hearsay. This debtor cooperated with the  
7 banks, continues to cooperate with all of the parties to the  
8 extent their requests are reasonable and will continue to be  
9 reasonable.

10           MR. SCHEIN: Your Honor, I don't --

11           THE COURT: Ultimately though it's boiling down to  
12 somebody in some location is saying you can't have it unless  
13 you pay me \$50,000.00 or \$5 million or whatever the number is.  
14 The issue for -- well, the issue is who pays that amount now  
15 if it's really necessary to obtain a release of the  
16 containers. I mean the cooperation side, the identifying of  
17 where it is --

18           MR. ROSEMAN: We have no problem with that.

19           THE COURT: -- lifting the stay to the extent it's  
20 in effect upon rejection, I don't see any of those being an  
21 issue.

22           MR. SCHEIN: Although I'd say we haven't gotten  
23 cooperation, Your Honor, because we were told at the last --  
24 at the last hearing that we were going to promptly get these  
25 lists. Like I said, we didn't get it. There was never any

1 email on the 15<sup>th</sup> sent. They haven't produced evidence to that  
2 and we ask also in this order that the Court require the  
3 debtor to further cooperate to the extent the list we just got  
4 three hours are incomplete or don't have proper contact  
5 information or the information doesn't work. We shouldn't  
6 have to wait two more weeks. A lot could have been  
7 accomplished the last couple of weeks once they filed their  
8 motion. We put this out there at the last hearing. It's not  
9 a surprise and we did not get cooperation and their foreign  
10 agents didn't cooperate with our foreign agents and it could  
11 be a he-said, she-said. The bottom line is we're trying to  
12 make this as smooth as quickly as possible for everyone's  
13 benefit here so we can take our property, the debtor can turn  
14 off its spigot and everyone can move on so that the estate can  
15 be maximized.

16 THE COURT: Before I hear you, Mr. Roseman, let me  
17 see if any of the other -- either of the attorneys want to be  
18 heard on this.

19 MR. WEINER: Yes, Your Honor. Bruce Weiner for  
20 Textainer. Just first we don't object to the rejection of the  
21 leases themselves.

22 We did this morning on the issue of the lists, we  
23 did this morning receive a further list. The first two lists  
24 that we received from the debtor my client took a look at and  
25 told me that the lists were completely useless and did not

1 contain any information -- all the information necessary but I  
2 did get the list this morning. I forwarded it onto my client,  
3 the vice-president of risk management. He took a look at the  
4 list, sent me back an email saying that the list that was  
5 received this morning did contain the information that my  
6 client needs to recover its containers.

7           On the other issue, I don't want to go in and repeat  
8 all the arguments that Mr. Schein made. I joined in his  
9 request in my papers and I join in his argument this afternoon  
10 for all the reasons that he set forth without belaboring the  
11 record.

12           THE COURT: Very well. Thank you. Mr. Simms.

13           MR. SIMMS: Just so we're clear for CAI. What's  
14 happening is there's going to be an exchange of claims here.  
15 That is the depots would have claims against the estate. It's  
16 going to be transferred now to the lessors who have paid what  
17 the depot say they're owed by the estate. That's the problem.

18           The detail that the order needs to go to too is any  
19 bills that the debtor has gotten from the depots so that we  
20 can negotiate those things out and agreements that there are  
21 with the depots for charges.

22           MR. ROSEMAN: We have no problem with providing that  
23 information. To the extent any agreements were made we'll  
24 certainly provide them -- we'll provide them statements we  
25 have from each of the depots.

1           THE COURT: And I suppose if necessary I could have a  
2 hearing on what's owed but it sounds that there's great doubt  
3 that if I had such a hearing the party seeking collection of  
4 the charges would be very moved by my determination of what's  
5 actually owed by the debtor.

6           MR. SIMMS: No, they wouldn't. That's all that  
7 CAI --

8           MR. SCHEIN: Unless you want to have the hearing  
9 overseas, Your Honor.

10          THE COURT: My jurisdiction is limited both  
11 constitutionally and geographically but the stay extends  
12 around the world but where it's honored is another issue.

13          MR. ROSEMAN: Correct, Your Honor. Just briefly in  
14 response to the argument for the payment of the -- what he  
15 calls the hostage, the ransom charges. What this really is is  
16 a revisiting of the request for a super priority claim. They  
17 came in and they made the same argument at the first DIP  
18 motion and they said it's not fair, we're really forced  
19 lenders. They have all these expenses and you should make  
20 them pay this. The Court said you had no statutory predicate  
21 for a super priority claim.

22          These are deals between sophisticated parties that  
23 recognize the risk of this particular business deal. In fact,  
24 in these leases there's a provision if the equipment becomes  
25 lost or stolen. There's a liquidated damages clause and I

1 submit the reason for that clause being in there is it's very  
2 common that this happens and if we can't return it a  
3 particular container well, then they have a damage in the  
4 amount of \$700.00, \$800.00, whatever the lease says, for that  
5 particular container that can't be returned and that's part of  
6 the claim.

7           While Mr. Schein likes to say this is a very unique  
8 situation and while the geography may be unique, this is no  
9 different than a warehouseman's claim. I'm a debtor. I  
10 abandon equipment in a warehouse. The secured party comes to  
11 the warehouse and says I have a court order that says pay  
12 me -- give me the equipment and I say you can have the  
13 equipment when you pay me my warehouse charges. Now, the only  
14 practical difference is you can bring the warehouseman from  
15 Kansas into this court but in reality what they're looking to  
16 do is reshift the risk of the business deal between business  
17 parties. There's no statutory predicate. There's no case law  
18 which says hey, debtor and our rejection of a lease motion you  
19 can be required to make various payments to depots and supply  
20 houses.

21           THE COURT: But tell me, Mr. Roseman, from the  
22 debtor's perspective let's say that I allow the leases to be  
23 rejected, leave the lessors to their contractual remedies and  
24 a location where the debtor stored leases says we need  
25 \$25,000.00 or you can't have your stuff back. They pay the

1 \$25,000.00 to get the stuff back. Is that then an  
2 administrative claim?

3 MR. ROSEMAN: I would say no. I'd say it's an  
4 unsecured claim. It's part of their rejection damages because  
5 then we get into the problem well, what if we say it's not --  
6 it shouldn't have been \$25,000.00 and one of the reasons we  
7 refuse to pay it is because we really think it's \$3,000.00 and  
8 how do we adjudicate that number with depot in Lahar,  
9 Pakistan. What we really stand at risk here doing is making  
10 the estate administratively insolvent because we don't know  
11 what these numbers are.

12 THE COURT: But if the debtor -- or the debtor having  
13 taken the position that it's up to the equipment lessors to  
14 retrieve their property, if they make the decision that they  
15 have to pay \$25,000.00 to get it back, the debtor wants to  
16 have the ability to second guess then whether they overpaid?

17 MR. ROSEMAN: Well, what we are -- our primary  
18 argument would be there was no benefit conferred to the estate  
19 and the evidence of that would be you had a liquidated damages  
20 clause, and I'll make up numbers, that put the value of this  
21 collateral at \$5,000.00 and you went and paid \$25,000.00 and  
22 now you want an administrative priority for it. What benefit  
23 was conferred upon this debtor's estate? And I would submit  
24 that none has been conferred and I think as a matter of law  
25 they're entitled to their damage claim. We could litigate

1 over this later whether that damage is an admin claim or an  
2 unsecured claim but it certainly isn't appropriate to make  
3 that decision in a rejection motion and to incorporate it in  
4 an order which could have far reaching effects on the  
5 reorganization of this case.

6 THE COURT: As far as the issue though of cooperation  
7 between the debtor, the debtor's foreign representatives, the  
8 equipment lessors to cooperate in obtaining releases was the  
9 word Mr. Schein used of the containers, if that obligation is  
10 imposed absent monetary cooperation -- in other words, if I  
11 instruct the debtor to do everything reasonably necessary to  
12 assist in release of the containers, I take it the debtors  
13 have no objection to that as long as I exclude the payment of  
14 money.

15 MR. ROSEMAN: I have no objection to that. I don't  
16 believe it needs to be in an order because --

17 THE COURT: I think they'd feel better if it was in  
18 an order.

19 MR. ROSEMAN: I have no doubt we're going to be  
20 before you on the fight of what's reasonable and that's my  
21 concern, Your Honor.

22 THE COURT: All right. Mr. Yang, do you want in on  
23 any of this?

24 MR. YANG: I don't think so, Judge.

25 THE COURT: Well, I'm certainly going to -- what I've



1 not heard -- what I have heard is that there's no dispute that  
2 the debtor is probably exercised its business judgment to  
3 reject the leases. I'm going to authorize the debtor to  
4 reject each of the leases listed in Exhibit A to the motion.

5 I'm going to reserve on the issue of who pays  
6 because frankly if there is simply nothing else out there  
7 besides the statute as it now exists and an Eastern District  
8 of Pennsylvania case from 1986 I'm not sure if that would --  
9 I'm not sure how helpful that is to me in the analysis. If  
10 there are other cases out there I'd like to see them but you  
11 all want to move expeditiously to get your stuff back and you  
12 would obviously like to know who's going to have to pay for it  
13 in the first instance. So I'm going to reserve on that.

14 I am going though to require the debtor and its  
15 foreign representatives to the extent I have jurisdiction over  
16 them that's derivative through the debtors, I'm going to direct  
17 the debtors and their foreign representatives to cooperate  
18 with the container lessors and their foreign representatives  
19 as far as identifying to the extent known to the debtor with  
20 exercise of reasonable diligence to find out where the  
21 containers are so that we avoid the he-said, he-said, and then  
22 she said something else disputes. I'm going to direct that  
23 the debtor file as a docket -- as a document docketed with the  
24 Court a list of the containers that were leased that are the  
25 subject of the rejection motion and the last known location of